Supreme Court, U.S.
FILED
04 359 JUL 26 2004
OFFICE OF THE CLERK

No.

In The

# Supreme Court of the United States

**EDWARD J. HABERERN, M.D.**
**Petitioner**

**v.**

**SPRAGUE & SPRAGUE, a Law Firm, et al.**
**Respondents**

**On Petition For Writ of Certiorari**
**To the Supreme Court of the Commonwealth of Pennsylvania**

## PETITION FOR WRIT OF CERTIORARI

**Andrew K. Parker, Esquire**
**I.D. No. 7635**
***Counsel of Record for Petitioner***
**371 Tamarack Drive**
**Allentown, PA 18104**
**(610) 776-8410**

## QUESTIONS

**I. Where the current Pennsylvania Constitution, Article 1, section 11, Article V, section 10(c) of the Constitution of 1968 and Rule 239(b)(1) of the Pennsylvania Rules of Civil Procedure together combine and declare that the Pennsylvania Supreme Court is the sole creator of the Pennsylvania Rules of Civil Procedure and therefore has the exclusive responsibility for administration of the judicial system and all procedural problems inherent therein:**

**a) Has the Supreme Court of Pennsylvania abused its discretion and erred** in failing and refusing to enforce its own Rules and by failing to explain, consider and remand petitioner's appeal on the merits and review petitioner's request for certiorari, because of an administrative default by the Prothonotary's negligent or fraudulent misapplication of P.R.C.P. No.236(a)(2), the Prothonotary's exclusive duty to give Notice of Judgment, all of which has prevented petitioner from Jury trial of his case and/or filing a timely appeal, thereby depriving petitioner of his rights and guarantees in violation of the Seventh and Fourteenth Amendments and Pennsylvania public policy, especially where, as here, there is in fact no valid and official Summary Judgment in this case and no judgment has been filed in the Office of the Prothonotary of Philadelphia County, despite a fraudulent Docket entry to the contrary?

## PARTIES TO THESE PROCEEDINGS
## WHOSE JUDGMENT IS SOUGHT TO BE REVIEWED

**Respondents: SPRAGUE & SPRAGUE, a Law Firm**
**RICHARD A. SPRAGUE**
**THOMAS A. SPRAGUE**
**WILLIAM H. WOLF, JR.**
**JAMES J. WEST**
**H. COLEMAN SWITKAY**
**VINCENT F. PRESTO**
**MARIANNE FRESCO**
**GOEFFREY C. JARVIS**
**TRACEY MOONEY SCHAEFFER**
**JOSEPH R. PODRAZA, JR.**
**THEODORE J. CHYLACK**
**JOSEPH J. MCALEE**
**PETER KONOLIGE**
**T. TRUXTON HARE, III and**
**DAVID S. LUBIN**

**Counsel of record for all defendants are:**

**Alan J. Davis, Esquire &**
**Martin C. Bryce, Jr., Esquire**
**BALLARD SPAHR**
**1735 Market Street, 51st Floor**
**Philadelphia, PA 1903**
**(215) 665-8500**

---

## PENNSYLVANIA
## REPORTS OF OPINIONS AND ORDERS ENTERED

**Reports or Opinions: NONE at each stage.**

**Orders Entered:**

**Philadelphia Court of Common Pleas;**

**Summary Judgment - NONE - Only Docket Entry on 4/8/02**

**Panepinto Order of 2/28/03 - Denied Appeal NPT - No Opinion**

**Superior Court: Per Curiam Order - Denies Petition for Review No Opinion**

**Supreme Court: Per Curiam Order - 1/30/04 - Denied Petition for Allowance of Appeal & Request for Certiorari, treated as a Petition for Relief Pursuant to Pa.R.A.P. 123 - No Opinion**

**Per Curiam Order - 4/26/04 - Denied Application for Reargument - No Opinion**

## JURISDICTIONAL STATEMENT

**The matter of *Failing to File any Judgment* or Opinion but on April 8, 2002 creating a false Philadelphia County Common Pleas Docket Entry purporting to grant Summary Judgment, with prejudice, without any Opinion or Notice of Judgment under PA R.C.P No.236(a) was unsuccessfully appealed NPT, denied without an Opinion, then Appealed to and Denied by Per Curiam Order of the Superior Court and then by Appeal and Request for Writ of Certiorari to the Supreme Court of Pennsylvania which on January 30, 2004 Denied Relief, Per Curiam. An Application for Rehearing, setting forth the Pennsylvania Supreme Court's Constitutional Duty to correct the Rule 236(a)(2) Notice problem was Denied Per Curiam by the Pennsylvania Supreme Court on April 26, 2004, notwithstanding Violation, inter alia, of the Seventh and Fourteenth Amendments to the United States Constitution.**

**This Honoraable Court has jurisdiction under 28 U.S.C., sections 2191(e) and 1257 and United States Supreme Court Rule 13.3.**

## PERTINENT PROVISIONS OF THE UNITED STATES AND PENNSYLVANIA CONSTITUTIONS AND PENNSYLVANIA RULES OF CIVIL PROCEDURE

**United States Constitution:**

**Seventh Amendment**
**Fourteenth Amendment**

**Constitution of the Commonwealth of Pennsylvania:**

**Article 1, section 6 and**
**Article 1, section 11**

**Pennsylvania Rules of Civil Procedure:**

**Rule 236(a)(2)**
**Rule 239(b)(1)**
**Rule 1035(a)**

## STATEMENT OF THE CASE

Petitioner's Complaint, Jury Trial Demanded, against SPRAGUE & SPRAGUE, a Law Firm, et al., filed to No. 003430 on 10/24/01 in the Philadelphia Court of Common Pleas, alleged that participating defendants, by their continuing Malpractice and Fraud in plaintiff-petitioner's name, had filed unconscionable, feckless, six (6) year litigation first in Philadelphia and another in Lehigh Counties (all transferred to Lehigh County) in which, inter alia, The Honorable James Knoll Gardner of the Court of Common Pleas of Lehigh County, Pennsylvania finally determined that the Complaint

filed by Sprague & Sprague alleged ***No Legitimate Causes of Action*** and further that ***the Statute of Limitations had run before suit began on the damages alleged*** by SPRAGUE & SPRAGUE. Nevertheless, SPRAGUE & SPRAGUE over six (6) years continuously billed Petitioner-plaintiff monthly for hourly fees in a total sum of $592,727.79 for unaccounted for open-ended, undefined fees. In addition, plaintiff accrued additional expenditures and attorney's fees of $35,860.19 to proceed in the Philadelphia case with a SPRAGUE & SPRAGUE worthless appeal to the Superior Court, (later transferred to the Commonwealth Court of Pennsylvania). SPRAGUE & SPRAGUE'S misconduct was clearly and unequivocally set forth, defined and confirmed in and by the Opinion of Judge. Ledbetter on 1/23/02 in the Commonwealth Court in No. 2870 C.D. 1999, which was attached to the Petitioner' Complaint as Exhibit "D". For these and other reasons, the Complaint demanded an award of substantial Punitive Damages.

On 1/11/02 defendants via Alan J. Davis, Esquire, BALLARD SPAHR et al. simultaneously filed an Answer and New Matter AND A MOTION FOR SUMMARY JUDGMENT, at a time when the pleadings were not closed. Plaintiff promptly responded to the New Matter and to defendants' motion for summary judgment by affidavit and many noteworthy Memorandum exchanges, pending a hearing and argument before the court, which never came. The argument on the summary judgment in this case, where over Half a Million ($500,000.00) Dollars had been deviously extracted from Petitioner's pocket by a prominent attorney's office, was never scheduled. Instead, a false docket entry planted by AN UNKNOWN PERSON on April 8, 2002, set forth, to wit:

"08-APR-02 15:49:24 ORDER ENTERED/236 NOTICE GIVEN
HUGHES, RENEE C
70-02010570 IT IS ORDERED THAT DEFTS' MOTION FOR SUMMARY JUDGMENT IS GRANTED AND THIS ACTION IS DISMISSED WITH PREJUDICE...BY THE COURT, JUDGE HUGHES,
4-3-02"

**No Rule of C. P. No. 236(a)(2) Notice was ever sent or received**

**by the Plaintiff. No Judgment was ever found by the Office of the Docket Clerk. No Judgment (nor Judicial Opinion herein examined the merits and) ever existed, *except as Exhibit "A" attached to the Memorandum of Law in Support of Defendants' Response to Plaintiff's PETITION FOR APPEAL NUNC PRO TUNC on January 6, 2003.* The burden of proof shifted to the Defendants when Defendants ignored, failed and deliberately refused to answer Petitioner-plaintiff's ten (10) question colloquy which might have firmly established the authenticity of the BALLARD SPAHR *unconfirmed offer of the Hughes purported judgment,* as contained in Volume I, pages 67a and 68a of the Reproduced Record filed in the Supreme Court of Pennsylvania, in PLAINTIFF'S ANSWER TO DEFENDANT'S RESPONSE TO PLAINTIFF-PETITIONER'S ANSWER TO RESPONDENT'S SUR-REPLY IN SUPPORT OF RESPONSE TO PLAINTIFF'S PETITION FOR APPEAL NUNC PRO TUNC. That burden still has never been met.** Neither Petitioner-plaintiff nor Petitioner's counsel of record ever received any Notice or knowledge that a certain Judge Hughes had been appointed by someone to hear the summary judgment matter in the case at bar, until after the mysterious docket entry appeared on the record in this case.

Defendants by aid of counsel by their deceitful acts sought to and did completely circumvent and change all of the local rules, pertinent laws, procedural rules and Notice of Judgment proceedings to the detriment of the petitioner-plaintiff and to the benefit of the defendants, thereby warranting this final appeal for justice through this Petition for Writ of Certiorari.

## ARGUMENT

The road to further fraud and manipulation by the misuse and circumvention of the Pennsylvania Rules of Civil Procedure, as demonstrated by the futility of appeal in this case, is now wide open, unless the Pennsylvania Supreme Court is held to task in enforcing and correcting the abuse of the Pennsylvania Rules of Civil Procedure and in construing them according to their true intent and clear and unequivocal meaning that they themselves created and for which said Court is bound by Constitutional

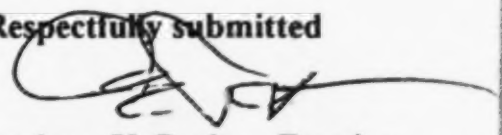
Responsibility to Administer and cure those problems as they arise.

Cases of this nature rarely get heard by the United States Supreme Court and are quickly suppressed or become too expensive to continue in the ends of justice. No cases have been reported, or found by counsel to exist, where prominent law firms are found to bill their clients monthly for feckless litigation, made to continue over a long period of time with no accounting for who and what was done, without suffering severe punitive damages, and then, when suit is brought by the client against them, have other prominent law firms in the same municipality manipulate the civil procedural system to effect additional fraud on the same client to prevent him from having his day in court and recovering at least his improperly acquired fees and expenses paid *as the Court and Jury may finally decide.* This serves as a prime example of a miscarriage of justice in the case at bar and should never be tolerated, much less be suppressed by rendering Judgment without Judicial Opinions.

The Seventh Amendment guarantees trial by jury in all cases where the amount exceeds $20.00. The Fourteenth Amendment prevents the taking of money without due process and guarantees equal protection under the laws and is construed to apply to the States.

Why shouldn't the Pennsylvania Supreme Court do its mandatory job and correct procedural problems like those that arose in the case at bar, instead of apparently condoning suppression and cover up by a failure to render Opinions on the Merits in the case at bar?

**Respectfully submitted**



**Andrew K. Parker, Esquire**
**I.D. 7635**
***Counsel of Record***
**371 Tamarack Drive**
**Allentown, PA 18104**
**(610) 776-8410**

No.

---

In The

# Supreme Court of the United States

---

**EDWARD J. HABERERN, M.D.**
**Petitioner**

**v.**

**SPRAGUE & SPRAGUE, a Law Firm, et al.**
**Respondents**

---

**On Petition For Writ of Certiorari**
**To the Supreme Court of the Commonwealth of Pennsylvania**

---

## APPENDIX OF PETITION FOR WRIT OF CERTIORARI

---

**Andrew K. Parker, Esquire**
**I.D. No. 7635**
***Counsel of Record for Petitioner***
**371 Tamarack Drive**
**Allentown, PA 18104**
**(610) 776-8410**

## OPINIONS, ORDERS, FINDINGS OF FACT AND CONCLUSIONS OF LAW

**None. This case has been given the silent treatment since the mysterious docket entry granting summary judgment on April 8, 2002, with no summary judgment having been received by the Prothonotary of the Court of Common Pleas of Philadelphia County, Pennsylvania.**

## FIRST DOCKET ENTRY "WITHOUT AN ORDER" SOUGHT TO BE REVIEWED

On April 8, 2001 an unknown person, ostensibly with fraudulent intent to circumvent Rule 236(a) of the Pennsylvania Rules of Civil Procedure and avoid giving Notice of Judgment, placed a fraudulent Docket Entry in the within case of Edward J. Haberern, M.D. v. SPRAGUE & SPRAGUE, a Law Firm, et al., Docket No. 003430 in the Office of the Prothonotary of the Court of Common Pleas of Philadelphia County, Pennsylvania, when there was no prior notice of judicial appointment, no prior hearing, no prior argument, in fact no such summary judgment had ever been filed of record and no such judgment in fact could be found by and in the said Office of the Prothonotary and no copy from which to appeal had ever been sent to the plaintiff's attorney, pursuant to Rule 236(a)(2) of the Pennsylvania Rules of Civil Procedure. Said Docket Entry consisted of the following:

08-APR-02 15:49:24 ORDER ENTERED/236 NOTICE GIVEN
HUGHES, RENEE C
70-02010570 IT IS ORDERED THAT DEFTS' MOTION FOR SUMMARY JUDGMENT IS GRANTED AND THIS ACTION IS DISMISSED WITH PREJUDICE...BY THE COURT, JUDGE HUGHES,
4-3-02"

## SECOND ORDER SOUGHT TO BE REVIEWED :

"Alan J. Davis, Esquire
I.D. No. 03853
Martin C. Bryce, Jr., Esquire
I.D. No. 59409
BALLARD SPAHR ANDREWS & INGERSOLL, LLP
1735 Market Street, 51ST Floor
Philadelphia, PA 19103
215/665-8500

Attorneys for Defendants Sprague and Sprague, Richard A. Sprague, ThomasA. Sprague, William H. Wolf, Jr., a/k/a Bill Wolf, James J. West, H. Coleman Switkay, Vincent F. Presto, Geoffrey R.Johnson, Goeffrey C. Jarvis, Joseph R. Podraza. Jr., Theodore J. Chylack, Joseph J. McAlee, Peter Konolige,T. Truston Hare, III and David S. Lubin

---

| | | |
|---|---|---|
| EDWARD J. HABERERN, M.D. | : | COURT OF COMMON PLEAS |
| | : | PHILADELPHIA COUNTY |
| Plaintiff, | | CIVIL ACTION - LAW |
| | : | |
| v. | : | OCTOBER TERM, 2001 |
| | : | |
| SPRAGUE AND SPRAGUE, a Law Firm, et al., | : | NO. 003430 |
| | : | |
| Defendants | : | |

ORDER

AND NOW, this 28 day of Feb, 2003. It is ORDERED that plaintiff's Petition for Appeal Nunc Pro Tunc is DENIED.

BY THE COURT

S/ *Panepinto*
J.

COPIES SENT
PURSUANT TO Pa. R.C.P. 236(b)
FEB 28 2003
First Judicial District of Pa.
User I.D. PAP

PHL_A#1700631 v1"

**THIRD ORDER SOUGHT TO BE REVIEWED**

**"IN THE SUPREME COURTOF PENNSYLVANIA**
**EASTERN DISTRICT**

EDWARD J. HABERERN, M. D. No. 67 EM 2003

Petitioner,

v.

SPRAGUE & SPRAGUE, A LAW FIRM, RICHARD A. SPRAGUE, THOMAS A. SPRAGUE, WILLIAM H. WOLF, JR. JAMES J. WEST, H. COLEMAN SWITKAY, VINCENT F. PRESTO, MARIANNE FRESCO, GEOFFREY C. JARVIS, TRACEY MOONEY SCHAEFFER, JOSEPH R. PODRAZA, JR., THEODORE J. CHYLACK, JOSEPH J. MCALEE, PETER KONOLIGE, T. TRUXTON HARE, III, AND DAVID S. LUBIN,

Respondents.

**ORDER**

**PER CURIAM**

**AND NOW, this 30th day of January, 2004, the Petition for Allowance of Appeal and Request for Certiorari, treated as a Petition for Relief Pursuant to Pa.R.A.P. 123, is denied**

**TRUE COPY FROM RECORD**
**Attost: JAN 30 2004**
**s/_____**
**Patricia Johnson, Court Clerk**
**Supreme Court of Pennsylvania**
**Eastern District"**

**FOURTH ORDER SOUGHT O BE REVIEWED**

**"IN THE SUPREME COURTOF PENNSYLVANIA**
**EASTERN DISTRICT**

EDWARD J. HABERERN, M. D. No. 67 EM 2003

Petitioner,

v.

SPRAGUE & SPRAGUE, A LAW FIRM, RICHARD A. SPRAGUE, THOMAS A. SPRAGUE, WILLIAM H. WOLF, JR. JAMES J. WEST, H. COLEMAN SWITKAY, VINCENT F. PRESTO, MARIANNE FRESCO, GEOFFREY C. JARVIS, TRACEY MOONEY SCHAEFFER, JOSEPH R. PODRAZA, JR., THEODORE J. CHYLACK, JOSEPH J. MCALEE, PETER KONOLIGE, T. TRUXTON HARE, III, AND DAVID S. LUBIN,

Respondents.

**ORDER**

**PER CURIAM**

**AND NOW this 26th day of April, 2004, the Application for Reargument is denied,**

**TRUE COPY FORM RECORD**

**Attest. APR 26 2004**

**S/ _____**
**Patricia Johnson, Chief Clerk**
**Supreme Court of Pennsylvania**
**Eastern District"**

## PERTINENT PROVISIONS OF THE UNITED STATES AND PENNSYLVANIA CONSTITUTIONS AND PENNSYLVANIA RULES OF CIVIL PROCEDURE

**UNITED STATES CONSTITUTION:**

**The Seventh Amendment provides;**

**"In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by jury shall be otherwise re-examined in any Court in the United States, than according to the rules of the common law."**

**The Fourteenth Amendment provides, inter alia:**

**"Section 1. . . . nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.**

**PENNSYLVANIA CONSTITUTION:**

**Article 1, Section 6 provides, inter alia:**

**"Trial by jury shall be as heretofore, and the right thereof remain inviolate. . . . ".**

**Article 1, Section 11 provides, inter alia:**

**"All courts shall be open; and every man for an injury done him in his lands, goods, persons or reputation shall have remedy by due course of law, and right and justice administered without sale, denial or delay. . . .".**

**PENNSYLVANIA RULES OF CIVIL PROCEDURE:**

**Rule 236(a)(2) provides, inter alia:**

> **"NOTICE BY PROTHONOTARY OF ENTRY OF ORDER, DECREE OR JUDGMENT**
> **(a) The Prothonotry shall immediately give written notice of the entry of . . . (2) any other order, decree or judgment to each party's attorney of record or, if unrepresented, to each party. The notice shall include a copy of the order, decree or judgment."**

**Rule 239(b)(1) provides:**

**"Local rules shall not be inconsistent with any general rule of the Supreme Court or any Act of Assembly."**

**Rule 1035.1 provides:**

**"*After the relevant pleadings are closed,* but within such time as not to unreasonably delay trial, any party may move for summary judgment in whole or in part as a matter of law."** (Emphasis supplied)

* * *